

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYLVESTER JAMES MAHONE,

Plaintiff,

v.

DOUG THAUT,

Defendant.

Case No. C04-5463RJB

ORDER

This matter comes before the Court on Plaintiff's Motion to Compel Discovery (Dkt. 127-1) and Motion for Court Appointed Expert Witness (Dkt. 129-1). The Court has considered the pleadings filed in favor and in opposition to these motions, and the file herein.

I. FACTS AND PROCEDURAL HISTORY

On July 13, 2005, United States Magistrate Judge J. Kelley Arnold issued a Report and Recommendation addressing 1) whether Plaintiff's claims regarding the handling of his legal mail should be summarily dismissed, 2) whether Plaintiff's claims regarding medical treatment (a specific medical emergency as a result of a pepper spray incident and other medical care) should be summarily dismissed, and 3) whether Plaintiff's claims regarding the conditions of his confinement should be summarily dismissed. Dkt. 103. The specific facts in this case are recounted at length in the Report and Recommendation and shall not be repeated here, except as is relevant to the pending motions.

On August 25, 2005, all Plaintiff's claims in this matter, except claims dealing with a pepper spray incident, were dismissed when the Report and Recommendation was adopted. Dkt. 112. All

1 Defendants were dismissed except Defendant Thaut, who was involved in the pepper spray incident.

2 *Id.*

3 This pepper spray incident was captured, in part, on a video tape. The tape contains another
4 inmate's attempted suicide. In an attempt to gain control of the inmate, prison guards used pepper
5 spray on the inmate attempting suicide. Plaintiff was housed in a cell nearby. Dkt. 103-1, at 4.
6 Plaintiff argues he declared a medical emergency off camera, and his declaration is on the video tape.
7 Dkt. 127-1 at 2. Plaintiff propounded three sets of interrogatories, in late 2004 and 2005,
8 requesting, in part, relevant recordings of the incident. Dkt. 127-2, Dkt. 126-2. Defendants
9 provided what they considered relevant portions of the tape. Dkt. 126-2. Defendants sent a letter to
10 Plaintiff on February 11, 2005 and spoke to Plaintiff in person in November 2005 about not
11 providing the entire tape for what Defendants argue were security reasons. *Id.* at 3. However, the
12 remaining Defendant produced the entire tape on December 20, 2005. Dkt. 134.

13 On December 22, 2005, Plaintiff moved the Court for an order compelling the Defendant to
14 produce the entire tape of the suicide incident, not just the portion of the tape Defendant contended
15 was relevant to Plaintiff's claims. Dkt. 127-1. Plaintiff seeks sanctions and reasonable attorneys
16 fees. *Id.*, at 6.

17 Plaintiff also moves the Court for appointment of an expert who he wants to examine the
18 tapes produced by Defendant for tampering and editing. Dkt. 129-1. Plaintiff contends that both
19 tapes have been "'edited' where Mahone yelled out he was declaring a medical emergency to
20 Defendant Thaut." Dkt. 129-1, at 3. Plaintiff provided both video tapes for review.

21 **II. DISCUSSION**

22 **A. MOTION TO COMPEL**

23 Plaintiff's Motion to Compel Discovery (Dkt. 127-1) should be denied as moot. Defendant
24 has produced the entire tape for Plaintiff before the motion was filed. Plaintiff is not an attorney, and
25 fails to point to any authority which holds that non-attorneys are entitled to attorney's fees.
26 Moreover, sanctions under Fed. R. Civ. P. 37(a)(4)(A) should not be awarded where the sought after
27 discovery was provided. Plaintiff's Motion to Compel should be denied as moot.

